

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1227

To be argued by MICHAEL J. REMINGTON

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

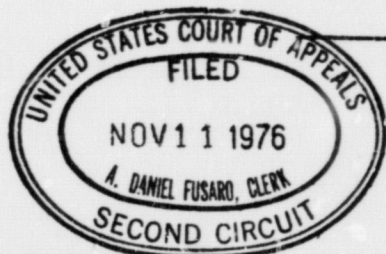
UNITED STATES OF AMERICA.
PLAINTIFF-APPELLEE

v.

CHRISTOPHER WILLIAMS,
DEFENDANT-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SUPPLEMENTAL APPENDIX



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of the Jury, then we will see what happens next.

(Whereupon the Jury was excused from the
Courtroom.)

MR. KELLY: May I make my motion, Your Honor?

THE COURT: Now is the time, Mr. Kelly.

MR. KELLY: Judge, at the close of the Government's
case I will move to dismiss the Counts in the indictment
on the ground that the Government has failed to make out
a prima facie case.

If I may address myself to the Counts in the
reverse order. I think quite frankly that there
insufficient evidence to take that particular Count of
conspiracy Count to a petty Jury as far as Counts 3, 4,
and 5 are concerned, Your Honor. I must confess that
as the chronology of the trial has developed, it is a
little bit murky in my mind, but it seems to me that
Counts 3, 4, and 5 refer to incidents that happened
outside this District, in Washington, D.C. And I don't
see how the Defendant can be charged with crimes that
happened outside of this jurisdiction in Washington.

He may very well have committed a crime with Mr.
Haralambus from the receipt of drugs, but I don't see
how the reception of drugs in Washington under either of
the principle of aider and abetter type of theory can
sustain the Counts in the indictment to which I have

referred.

THE COURT: Now, let's take that separately. You challenge which Counts?

MR. KELLY: Counts 3, 4, and 5, Your Honor. As I recall there were just two transactions in New York. And the other transactions were employed by Mr. Haralambus going to Washington and giving the drugs to Mr. Williams there, and being paid for it. I just don't see that those crimes can be seen to be committed within the Eastern District of New York. That is what I have to say with respect to those Counts.

THE COURT: Mr. Haralambus was so nearly inaudible I had great difficulty in following his testimony, and I can't say with any candor that I got any of it. Perhaps Counsel can refresh my recollection as to what they heard of his testimony.

MR. KELLY: Judge, it is my recollection that Mr. Haralambus' testimony was, and I noted it because it was apparent and so different in many respects from the testimony that he had given at the earlier trial. His testimony appeared to be an indication that there were more transactions in Washington than there were actually charged in the indictment and concerning which he had not testified to in the earlier trial.

I would say that my recollection of Mr. Haralambus'

1 testimony together with that of Mr. Morton, and Mr.
2 Mikedas, would indicate that there were just two drug
3 transactions in New York in which Mr. Williams might have
4 been involved. All of the other transactions, whether
5 they are the ones mentioned in Counts 3, 4, and 5, or
6 whether these additional ones appear to be coming in out
7 of the blue, all of those took place in Washington. I
8 just don't recollect Mr. Haralambus referring to any
9 third transaction that took place in New York.

10 THE COURT: Well, what was the second one supposed
11 to have been? We have got the pharmaceutical drug to
12 which the Defendant seemed not to have been connected at
13 all. Is that correct?

14 MR. BARLOW: That is true, Your Honor.

15 THE COURT: That seems to have been the February
16 period, was it? January-February period of Count 2?

17 MR. BARLOW: Yes, Sir.

18 THE COURT: Well, was Mr. Williams implicated at
19 all in the transaction at that time other than what, the
20 two ounces that were left over from the second phase.
21 That is all supposed to have happened in January-February?

22 MR. BARLOW: Yes, Sir.

23 MR. KELLY: Well, Your Honor, the only testimony
24 that --

25 THE COURT: And the testimony on that, as I understand

1 it, was that he wasn't participating in that lot at all
2 except to the extent of the two ounces that Peter Mikedes
3 took back to Washington with him, is that correct?

4 MR. BARLOW: Partially right, Your Honor. I think
5 the testimony shows this: That originally after the
6 second package had been tested at Betty Gage's apartment
7 Mr. Mikedes called Mr. Williams and he agreed to take the
8 second package then in New York and going to Pearl's
9 apartment with Mr. Haralambus, and Mr. Morton trying to
10 get rid of it in New York.

11 THE COURT: Well, as I understand the testimony,
12 while they had talked with Mr. Williams, if the testimony
13 is accepted, they didn't follow through on it, but decided
14 that they would market it in New York and turned to
15 Pearl without success.

16 MR. BARLOW: Right.

17 THE COURT: But he managed to get rid of two ounces
18 that was left, two ounces that Peter took back to
19 Washington. That was hardly a program that had been
20 set up with Mr. Williams, was it?

21 MR. KELLY: That's right, Judge.

22 MR. BARLOW: No, that wasn't the exact program.

23 THE COURT: Well, as to that Count, where is the
24 New York venue?

25 MR. BARLOW: I think at least as to the two ounces

1 that eventually got to Mr. Williams, you have Mr. Baralambus
2 and Mr. Mikeses and Mr. Morton acting as his agents in
3 New York. Since, if you remember, Mr. Morton was the last
4 one to testify about this, I think he was clear.

5 THE COURT: He was a lot clearer than anyone else,
6 at least audible.

7 MR. BARLOW: One good thing about being in a third
8 trial is the testimony was a lot more clear and audible
9 than the first two times it went around.

10 However, Mr. Morton said that only because
11 Mr. Williams had been so lax in coming back with the
12 profits on the first transaction did they try to get rid
13 of the cocaine in New York. And I think it is arguable
14 that it was part of the transaction that they were a
15 part of the second quarter pound.

16 THE COURT: If I understood what Mr. Morton has told
17 us, and he was talking about the January-February period
18

19 MR. BARLOW: Yes, Sir, he was.

20 THE COURT: Was that he got into New York as Chris
21 Williams was just leaving Betty Gage's apartment. And
22 that they were together 10 or 15 minutes before Mr.
23 Williams left. And that he called h's wife and she came
24 up with \$1,000.00. She turned it over ultimately to
25 Mr. Morton and they all went back to Gage's home some

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1 or another after a lot of messing around, Haralambus
2 turned up with a quarter pound, presumably from his
3 source. And they talked about using Rick -- What was Rick's
4 last name?

5 MR. KELLY: Daniels. Harry Hackett and Rick Daniels

6 THE COURT: It sounds like that they were basically
7 messing around, and Rick Daniels went with them to Pearl's.
8 And she complained about the rock or something being
9 squeezed out. They left and hung around New York with
10 sub-packaging and tried to get rid of it. Over a period
11 of time they got rid of maybe half of it. And then the
12 last time Mr. Morton saw anybody about anything was when
13 Peter Mikedes retreated to Washington with two ounces.

14 Now, I don't see how that is a case against
15 Mr. Williams at all, if you are relying on Mr. Morton,
16 because Mr. Morton's testimony is completely unculpatory

17 MR. BARLOW: Except for one salient fact Your Honor
18 left out. Before he came up to New York the second time
19 he said that he got in contact with Mr. Williams about
20 his other debts from a prior similar act. And Mr.
21 Williams gave him a little over \$1,000.00, not for that
22 but to buy the second package of cocaine from New York.
23 And since we know from the testimony of Mr. Mikedes and
24 Mr. Haralambus the price was the same for the second package,

25 I think it is logical to assume that Mr. Morton

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2 would only receive a portion of the 3375 for the cocaine
3 that he had paid for in the first place. He got about
4 half I believe, I think Mr. Morton said about two ounces
5 Mr. Mikedes said about ounce and a half and he went
6 back down to Washington. The second time an ounce and
7 a half 3375, around \$1,000.00 for an ounce. It would
8 be in the thousand dollar range. And Mr. Williams got
9 exactly or substantially the amount of cocaine that he
10 had fronted the money for.

11 THE COURT: Well, I don't remember him say that he
12 got the money from Mr. Williams for the purpose of going
13 to buy cocaine. We may have to have it read back,
14 because I remember that question he answered rather well.
15 It would be important I would think.

16 Well, what is your view of it?

17 MR. KELLY: I think the only theory that the
18 Government could prevail on the Court would be that Mr.
19 Williams had provided some of the money for these drugs
20 in New York as an aider and abetting type of theory.
21 Judge, there was some testimony that Mr. Williams received
22 some money at a Western Union Office, I think, when he
23 was in New York.

24 THE COURT: What was that?

25 MR. KELLY: Mr. Williams went to a Western Union
Office, I think there was some testimony or chronology,

1 but I would say candidly that that production of money,
2 I am not sure whether that is the same thing that Mr.
3 Barlow is talking about, but that production money would
4 be, although I don't like to admit a link between this
5 Count and Mr. Williams, and therefore, giving some
6 support for sustaining the case.

7 The other Count is a similar Count, number 1 is similar
8 with respect to whether or not the Defendant could have
9 said to have been an aider and abettor in providing
10 money in Washington before Mr. Morton and Bebe went to
11 New York.

12 THE COURT: Mr. Mikedes said something about that
13 in which I took it that it is the second transaction.

14 MR. KELLY: My recollection of the testimony
15 with respect to Count 1 and Count 2 is that Mr. Williams
16 could be kept into the case on those Counts under the
17 Western Union situation that existed.

18 THE COURT:: The third transaction is I suppose,
19 April 1st., is that it?

20 MR. BARLOW: Yes, Sir.

21 MR. KELLY: Then we go back into 3, 4, and 5, and I
22 think we are back in the situation involving distribution
23 in Washington, D.C. I think my view is that there was
24 just two transactions in New York by the subject of Counts
1 and 2.

1 But as far as the other Counts are concerned they
2 all went down in Washington. And I don't see how the
3 Defendant can be kept in the case for crimes that were
4 committed in other jurisdictions.

5 I don't see how under any aiding and abetting theory
6 he can be responsible for drugs that were bought. I mean,
7 to be a real aider and abetter for drugs that were brought
8 into the other jurisdiction that Haralambus and Bebe
9 brought them for him. I mean, it would be stretching the
10 aiding and abetting theory pretty far.

11 3, 4, and 5 to the extent that you can separate the
12 matter, presumably would be one after Haralambus says that
13 he had talked with Mr. Durso about operating on consignment
14 from there on.

15 There was no money provided by Mr. Williams on
16 those transactions until it arrived.

17 THE COURT: Until after distribution?

18 MR. KELLY: Yes.

19 THE COURT: So that all that was involved there,
20 if anything, would have been Mr. Williams knowingly re-
21 ceiving from New York City sources of narcotics for
22 distribution in Washington, is that it?

23 MR. KELLY: Yes.

24 MR. BARLOW: With one other tie in, Your Honor. Also
25 the profits of the last three deals to cover the debts,

1 the missing profits that never came back to New York
2 from the first two drug transactions.

3 By April, 1974 Mr. Durso had given out half a pound
4 of cocaine and got \$150.00, two-times 3375. And then
5 the second transaction the profits there were supposed
6 to cover their expected profits on the first quarter
7 pound of cocaine. But I think it is certainly arguable
8 from the testimony that last three transactions were going
9 to attempt to cover the debt, the profit that Mr.
10 Williams still owed the people up in New York.

11 THE COURT: But does that have anything to do with
12 these Counts?

13 MR. BARLOW: I think it does, Your Honor.

14 The end result that Mr. Durso ended up being
15 owed \$5,000.00, and that got knocked down very little
16 by Mr. Haralambus saying that he came up with \$500.00
17 from some of friends. But he didn't get anything back
18 from Mr. Williams.

19 THE COURT: That hardly seems to be connected with
20 these Counts which is possession with an intent for
21 distribution. However, if you withdraw the Count that
22 would be another matter.

23 MR. KELLY: Well, I think Mr. Barlow's theory is a
24 very tedious one, Your Honor. I think we are dealing
25 in subsequent crimes. I don't think you can go through

1 these gymnastically. They involved possession and dis-
2 tribution, as I say, and I don't think that took place
3 within this jurisdiction.

4 THE COURT: Is that the only tie back? You see,
5 my problem is that it is a tie back and it doesn't flow
6 from Counts 3, 4, and 5. And certainly, even if you think
7 of Durso as significant, there isn't any indication that
8 he was putting cocaine in Mr. Williams' way so that he
9 could look to him for it. He was trying to get this
10 cocaine out of the city for distribution outside of the
11 city. For all we know he would have preferred to deal in
12 that fashion and not deal with dead beats.

13 The venue question has bothered me from the start.

14 That much of the facts of uncertainty in the
15 evidence may be a little bit tricky.

16 I would think on the evidence that I have heard,
17 that the Motion to dismiss Counts 3, 4, and 5 on the venue
18 ground, the Motion is granted.

19 Now, I take it that Count 6 stands in a different
20 light?

21 MR. BARLOW: I would think so, Your Honor.

22 THE COURT: Because if the conspiracy was important
23 and it was indictable in New York, because it deals, at
24 least, with two New York transactions. The fact that
25 embarrasses Washington transactions does not impair it

1 from a venue point of view, or any other point of view.

2 MR. KELLY: I agree.

3 MR. BARLOW: I am sure Posscio(?) would agree with
4 Your Honor.

5 THE COURT: Well, Mr. Posscio isn't here, and I
6 would think as to other Counts, certainly with Mr. Morton's
7 help, a case has been made out on Counts 1, 2, and 6
8 which the Jury could reasonably accept as to establish
9 Mr. Williams guilt beyond a reasonable doubt.

10 MR. KELLY: I am satisfied that is a rational
11 conclusion, Your Honor.

12 MR. BARLOW: Your Honor, I would just ask that the
13 Court tells the Jury that the reason for the dismissal
14 of Counts 3, 4, and 5 is on venue.

15 MR. KELLY: I don't think the Jury should be told
16 the reason for the dismissal.

17 THE COURT: I think I will say to them that without
18 reaching any other question Counts, that there has been
19 concluded as a matter of law to Counts 3, 4, and 5 may
20 not be submitted to you because of the venue requirement.
21 That is, that the case be sufficiently connected within
22 the District to authorize this indictment here.

23 MR. KELLY: Alright, Judge.

24 MR. BARLOW: That certainly is alright with the
25 Government.

THE COURT: Do you want to go to lunch now and come

1 back at 1:30? Meanwhile, look at the charges together and
2 see what you think.

3 MR. BARLOW: Yes.

4 THE COURT: Certain things will be made to accom-
5 modate what happened today as to Counts 3, 4, and 5.

6 MR. BARLOW: I would just like to make my objec-
7 tions, I think, to one or two parts, I think just four of
8 the pages --

9 THE COURT: Of what?

10 MR. BARLOW: I can give you my objections right now,
11 if that is going to give you and your Clerk time, at least,
12 to deliberate on it.

13 THE COURT: Yes.

14 MR. BARLOW: As to the Court's charge I would
15 quarrel with only one page going -- Since mine isn't
16 numbered, going towards the middle.

17 THE COURT: They are numbered somewhere.

18 MR. BARLOW: Well, this one is 202-A.

19 THE COURT: Yes.

20 MR. BARLOW: It is the missing witness instructions,
21 Your Honor.

22 THE COURT: Is that in there?

23 MR. BARLOW: I don't think that there are any known
24 cumulative witnesses that could be called. I don't think
25 the Government should be put in that position to have

1 Mr. Durso and Mr. Fabella come in and take the stand even
2 if they were given immunity.

3 THE COURT: I think we are better off not putting
4 that in. I must confess I don't think that belongs in
5 the case.

6 MR. KELLY: Well, Judge, I am going to argue that
7 the Government could have brought in more testimony,
8 independent testimony to corroborate the testimony of
9 these individuals who have testified before the Court.

10 Mr. Barlow; I would ask the Court to add one other
11 thing that I am sure we certainly were not aware until
12 Mr. Morton testified, prior similar act instructions.

13 THE COURT: I don't think you need that. I think
14 that is a question of admissibility. And that was your
15 objection?

16 MR. KELLY: Yes, that was my objection which was
17 really the theory which it was being introduced.

18 THE COURT: All the evidence is in because, I think,
19 I won't charge that. As a matter of fact, there is an
20 argument made for this admissibility, and I accept it
21 reluctantly. I don't care for similar acts.

22 MR. KELLY: Judge, I have no objection to the
23 charge. I would just ask that --

24 THE COURT: We can put in page 60. Do you want that?

25 MR. BARLOW: I am sorry, I haven't gone through that

Your Honor.

MR. KELLY: Oh, yes. I am sorry I missed 60. That is what I was going to refer to. I was going to suggest that it be 51-A.

THE COURT: What we can do since it is going to be used, we can put it in between the two parts of 51-A because it fits in a little more rationally that way.

MR. KELLY: I am satisfied with the charge, Judge.

THE COURT: Okay, Gentlemen. 1:30 then.

We didn't excuse the Jury, may I have my Clerk excuse the Jury rather than summoned them back into the Courtroom.

MR. BARLOW: Yes, as far as I am concerned.

MR. KELLY: Yes.

THE COURT: Your motion for a directed verdict of acquittal on the three remaining Counts is denied.

MR. KELLY: Yes.

MR. BARLOW: Let's not forget that Mr. Kelly still has to close his case, too.

MR. KELLY: Yes. I will do that in the presence of the Jury.

(Whereupon Court adjourned for the noon recess.)

(Afternoon Session)

THE CLERK: The United States of America versus Christopher Williams.